

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: **DEBORAH R. MALLOY**, : **Chapter 7**
: **Debtor** : **Bky. No. 14-17727 ELF**

ORDER

AND NOW WHEREAS:

- A. On **April 13, 2015**, the Debtor filed a Motion to Avoid the Judicial Lien. (Doc. #'s 115, 119) (“the Motion”).
- B. In the Motion the Debtor requested that court avoid the judicial lien of Respondent J&V Developers, Inc. (“J&V”) that encumbers her real property located at 4204 Upland Drive, Boothwyn, PA (“the Property”).
- C. The judicial lien arises from a judgment in the amount of **\$63,486.05**, entered in the Court of Common Pleas, Delaware County on June 13, 2012, in No. 2008-051847.
- D. J&V filed a response to the Motion (Doc. # 121) on **April 29, 2015**.
- E. The court held an evidentiary hearing on the Motion on **May 13, 2015**.¹

* * * * *

- F. The Debtor commenced this bankruptcy case on **September 25, 2015**.

¹ At the conclusion of the hearing, based on the parties’ agreement, the court deferred a ruling on the Motion pending further developments in case administration. (Order dated May 13, 2015) (Doc. # 124). Essentially, the parties wanted to await further developments in the chapter 7 trustee’s efforts to market the subject property in the hope that those developments might result in a settlement of the Motion. Following a status hearing in the matter held on **August 5, 2015**, the court, with the concurrence of the parties, determined that there was no reason to further defer a ruling on the Motion.

G. As of the commencement of the case, the Debtor was the sole owner of the Property.²

H. As of the commencement of the case,³ the fair market value of the Property was

\$230,000.00.⁴

I. As of the commencement of the case, the unpaid balance of the unavoidable mortgage on the Property held by Santander Bank, N.A. was **\$199,402.02.** (Ex. D-4).

J. Pursuant to 11 U.S.C. §522(d)(1) and (5), the court has allowed the Debtor an exemption in the Property in the amount of **\$22,975.00.** (Order dated Jan. 21, 2015) (Doc. # 85).⁵

K. Based on the foregoing, J&V's lien avoidable in part, but non-avoidable to the extent of

² This fact is undisputed. In her Schedule A, the Debtor described herself as "Owner" and added that "husband and wife live there." (Doc. # 3).

³ The valuations made in connection with the allowance of a debtor's exemptions under 11 U.S.C. §522(b) and a debtor's right to avoid a judicial lien that impairs an exemption under 11 U.S.C. §522(f) are made as of the commencement of the bankruptcy case. See *In re Windfelder*, 82 B.R. 367, 371-72 (Bankr. E.D. Pa. 1988); accord *In re Wilding*, 475 F.3d 428, 432 (1st Cir. 2007); *In re Goswami*, 304 B.R. 386, 391-92 (B.A.P. 9th Cir. 2003).

⁴ The Debtor purchased the Property on March 9, 2011 for \$265,000, subject to a "seller assist" of \$15,900.00, making for effective sales price of \$249,100.00. At the hearing, the Debtor offered her lay opinion testimony that the property was worth \$220,000.00. There was no other valuation evidence offered at the hearing except a reference to its current listing price (and I give little weight to that evidence). Due to the Debtor's self-interest and courtroom demeanor, I have found her mostly, but not entirely, credible on this particular issue.

⁵ In her Amended Schedule C, (Doc. # 50), the Debtor claimed an exemption in the Property totaling more than \$80,000.00. The Trustee objected to the claimed exemption. (Doc. # 60). After a hearing, the court sustained the Trustee's objection and allowed the exemption in a reduced amount by the January 21, 2015 order referenced above in the text. The Debtor filed a notice of appeal of that order on February 3, 2015. (Doc. # 91).

\$7,622.98.⁶

* * * * *

It is therefore **ORDERED** that:

1. The Motion is **GRANTED IN PART and DENIED IN PART**.
2. Pursuant to 11 U.S.C. §522(f), the judicial lien (“the Lien”) of J&V Developers, Inc. that arises from the judgment entered in the Court of Common Please, Delaware County on June 13, 2012, in No. 2008-051847 and that encumbers the Debtor’s real property located at 4204 Upland Drive, Boothwyn, PA (“the Property”) is **AVOIDED IN PART**.
3. The Lien is **AVOIDED** except to the extent of **\$7,622.98**.

Date: August 5, 2015



ERIC L. FRANK
CHIEF U.S. BANKRUPTCY JUDGE

⁶ My determination is based on the following calculation pursuant to 11 U.S.C. §522(f)(2)(A):

value of the Property	\$230,000.00
(minus non-avoidable mortgage lien)	(\$199,402.02)
(minus exemption claimed by Debtor)	<u>(\$ 22,975.00)</u>
Non-exempt value of Debtor's interest in the Property	\$ 7,622.98

See In re Coley, 437 B.R. 779, 786 & n.8 (Bankr. E.D. Pa. 2010).

I note that, consistent with the overwhelming weight of authority, I have not reduced the value of the Property for purposes of determining the avoidability of J&V’s lien by the likely transaction costs in a private sale or other liquidation of the Property. See, e.g., Windfelder, 82 B.R. at 372; see also In re Wolmer, 494 B.R. 783, 784-85 (Bankr. D. Conn. 2013),